

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 24003

IN THE SUPREME COURT OF THE STATE OF HAWAII

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RICHARD KIDANI, Plaintiff-Appellant

vs.

RUSSELL GRISHAM, and ATM CASH SYSTEMS TRUST,  
Defendants-Appellees

and

MICHAEL LYNCH, and PACIFIC ATM DISTRIBUTORS, INC., Defendants

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 97-1413)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Plaintiff-appellant Richard Kidani appeals from the April 10, 2001 amended judgment of the circuit court of the first circuit, the Honorable Gary W.B. Chang presiding, finding in favor of defendants-appellees Russell Grisham and ATM Cash Systems Trust [hereinafter, collectively, "Grisham"] and against Kidani. On appeal, Kidani argues that the circuit court erred by refusing (1) to recognize and apply the doctrine of agency by estoppel and (2) to reopen his case to allow for the reading of Grisham's deposition.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) by addressing apparent authority, the circuit court effectively

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addressed agency by estoppel, see Whetstone Candy Co. v. Kraft Foods, Inc., 351 F.3d 1067 (11th Cir. 2003); C.A.R. Trans. Brokerage Co., Inc. v. Darden Restaurants, Inc., 213 F.3d 474 (9th Cir. 2000); Cho Mark Oriental Food, Ltd. v. K & K Intl., 73 Haw. 509, 516-17, 836 P.2d 1057, 1062 (1992); Cosmopolitan Fin. Corp. v. Runnels, 2 Haw. App. 33, 625 P.2d 390 (1981); (2) Kidani's reliance on Restatement (Third) of Agency § 2.05 (T.D. No. 2, 2001) is misplaced, inasmuch as Kidani failed to establish that he believed Lynch was an agent of Grisham and that he relied on that belief to his detriment; and (3) the circuit court did not abuse its discretion by refusing to allow Kidani to reopen his case, see Pelosi v. Wailea Ranch Estates, 91 Hawai'i 478, 985 P.2d 1045 (1999). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

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Hurd & Luria for the  
plaintiff-appellant  
Richard Kidani

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for the defendants-appellees  
Russell Grisham and  
ATM Cash Systems Trust